



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

US EPA RECORDS CENTER REGION 5



514496

REPLY TO ATTENTION OF:

JAN 7 1985

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Re: United States v. Reilly Tar Chemical Corp.
No. 4-80-469 (D. Minn.)

Dear Gentlemen:

Pursuant to paragraph 10 of the Case Management order, enclosed is a list of Region V documents withheld on the basis of privilege. The list of Headquarter documents withheld on the basis of privilege will be mailed separately from Washington, D.C.

Sincerely yours,

Elizabeth Maxwell
Elizabeth Maxwell
Assistant Regional Counsel

Enclosures

cc: Francis X. Hermann, Esq.
David Hird, Esq.

LIST OF REGION V, EPA, DOCUMENTS WITHHELD ON THE BASIS OF PRIVILEGE

1. Letter from Life Systems, Inc. to James Bzdusek of February 2, 1984, with attachments, re: Revised Work Assignment Plans for litigation support.
2. Handwritten notes of Paul Bitter, re: litigation strategy, dated 9/21-22/83.
3. Paul Bitter trip report dated February 17, 1984, re: January 25, 26, 31 and February 1, 1984 trips to MPCA offices, cc: Robert Leininger and Richard Bartelt.
4. Paul Bitter trip report dated June 13, 1984, re: enforcement meetings at MPCA, cc: Robert Leininger and Richard Bartelt.
5. Letter from Paul Bitter to Dr. James Selkirk, dated April 27, 1984, re: analytical data, cc: David Hird, Robert Leininger, Deborah Woitte, and Stephen Shakman.
6. Letter from Paul Bitter to Dr. Euala Bingham of May 28, 1983, re: review of technical documents prepared for litigation, cc: David Hird and Robert Leininger.
7. Memorandum from Paul Bitter to Michael Kosakowski, EPA, dated June 20, 1983, re: NUS Laboratory Contract for litigation support.
8. Letter from Paul Bitter to Michael Hensel, MPCA, dated August 29, 1983, re: enforcement support, cc: David Hird.
9. Letter from Paul Bitter to Steve Riner, MPCA, dated June 20, 1984, re: litigation support, cc: Stephen Shakman, Robert Leininger, David Hird.
10. Handwritten memorandum of Paul Bitter dated May 3, 1983, recording phone conversation in call from Michael Hensel (MPCA), re: enforcement case strategy, cc: Robert Leininger.

11. Correspondence with and documents prepared by NUS Corporation, an EPA enforcement and litigation support contractor, including subcontractor's review of ERT report.
12. Correspondence with Techlaw, Inc., enforcement subcontractor, re: preparation of analytical data base.
13. Numerous drafts of a memorandum not finalized, but in preparation by Paul Bitter for Basil Constantelos signature, to Gene Lucero, addressee, re: summary of discussions by EPA personnel of alternate concentration levels for PAH at Reilly Tar site.
14. EPA memoranda pertaining to and drafts of May 25, 1984 Record of Decision in Reilly Tar and Chemical Company.

LIST OF DOCUMENTS WITHHELD ON THE BASIS OF PRIVILEGE

1. Drafts of Record of Decision (undated)
2. Handwritten notes of Paul Bitter re: litigation preparation
Work Assignment to GCA Corp., signed by Julie Klaus, Office
of Waste Programs Enforcement May 27, 1982.
3. Marc F. Hult Comments (handwritten) on drilling contract
4. Memo from William Hedeman to Rita Lavelle (undated):
Action memorandum re: authorization to Undertake Redemial Planning
and Implementation Work at Reilly Tar & Chemical Corp. (Section
on Enforcement Status confidential)
5. GCA, Drilling Log Assessment Work Plan Sept. 1, 1983
6. Summary of Pertinent Technical Information prepared by
Melanie Topfler for Erica Dolgin and Robert Leininger (undated)
7. Miscellaneous Proposal Sheets indicating proposed tasks
and changes, prepared by Dennis Coyne (undated)
8. Transport of Coal-tar Derivatives in the Prairie du
Chien-Jordan Aquifer, project proposal by USGS. Two drafts (August
1980 and November 1980).
9. Letter from Dennis Foerst to Stephen Shakman re: MDH
data dated June 15, 1982
10. Memo from Mike Hansel to Stephen Shakman June 11, 1982
11. Steve Reed, Briefing Memo on Industrial Process Used
at Reilly Tar & Chemical Corporation at St. Louis Park, Minnesota
Plant (1916-1973) (various drafts)
12. The United States is withholding a series of documents,
prepared by GCA Corporation, an enforcement contractor. Because
the documents in this group fall into several types, it is simpler
to describe them by type. The United States is withholding work
plans, monthly task reports, and monthly assignment reports.
The United States is producing data from samples taken by GCA
and quality assurance plans.

13. Letter from Paul Bitter, EPA to Dr. David Cogley, GCA dated November 9, 1983

14. Proposed Soil Sampling Plan for the Abandoned Reilly Chemical and Tar Site, by K.W. Brown & Assoc. Oct. 1981

15. Attendance List for Litigation Meeting 6/24/83;

16. Letter to Paul Bitter from Dr. James Selkirk of January 20, 1984.

17. Letter to Mike Kosakowski, EPA, from Mike Hansel, MPCA, dated February 1, 1983 re: GCA enforcement activities. cc: Paul Bitter, EPA

18. Letter from Russell Wilder, GCA, to David Hird, dated January 7, 1983

19. Pereira, et. al. Ground-water contamination by Organic Bases from Coal-Tar Wastes (Preliminary Report April 1982)

20. Hult, Report of Investigation October 1, 1980 through June 30, 1981. July 1981

21. Letter from Kenneth T. McGregor, GCA, to Mike Kosakowski, re: proposed analytical procedure, dated Nov. 23, 1982

22. Letter from Maureen A. Brennman, U.S. EPA Office of Enforcement, to Dr. Bernie Daniel, U.S. EPA Health Effects Research Laboratory, July 10, 1980, cc: Robert Leininger, Erica Dolgin (Prepared in anticipation of Litigation) Opinion on Synergism of PAH

23. Letter from Paul Bitter, U.S. EPA Region V, to Michael Harris, April 26, 1984 (re: Kimble Protocol)

24. Groundwater data summation (Toepfler)

25. PAH analysis 1978 to present (Toepfler, 10-6-80)

26. Listing of sample analyses (Toepfler)

27. Transport of Coal Tar Derivatives in the Prairie du Chien - Jordan Aquifer, St. Louis Park, Minnesota (Minnesota District UGGS, 12-80)

28. Degradation of Phenolic Contaminants in Groundwater by Anaerobic Bacteria, St. Louis Park, Minnesota (U.S. Dept. of Interior Geology Survey 6-2-82)
29. Transport of Coal Tar Derivatives in the Prairie du Chien - Jordan Aquifer (U.S. Geology Survey, St. Paul, MN 8-80)
30. Work Assignment (Julie Klass 5-27-82)
31. Letter to U.S. EPA from GCA (Kenneth T. McGregor 2-26-82)
32. Scope of Work (8-31-81, author not known)
33. Work Plan for Analysis of Environmental Samples in Support of EPA Region V (GCA 9-22-81)
34. Chain of Custody Record (GCA 1-13-82)
35. Potential Pathways of Human Exposure to Polynuclear Aromatic Hydrocarbons at the Abandoned Reilly Tar and Chemical Site (K.W. Brown and Associates 11-81)
36. Request for Quotation (GCA 8-82)
37. Letter dated October 22, 1984 from Paul Bitter to Dr. Brenda Kimble concerning expert witness testimony. Copies to H. Cole and M. Harris of CH2M Hill; M. Hult (USGS); S. Riner and S. Shakman (MPCA); D. Woitte (EPA); and D. Hird (U.S. DOJ).
38. Letter dated September 26, 1984, to Paul Bitter from Brenda Barcus of the Contractor Evidence Audit Team concerning trial preparation. Copies to R. Leininger (EPA); M. Simmonet and G. Lowry (MPCA); and R. Laidlaw (NEIC).
39. Letter dated November 21, 1984, from Paul Bitter to Denis Forest concerning trial preparation. Copies to S. Riner, D. Crisman, G. Lowry, and S. Shakman (MPCA); C. Grundler, R. Leininger, and D. Woitte (EPA); B. Kimble; M. Hult (USGS); O. Pfannkuch; M. Harris; D. Hird; J. Selkirk; W. Thompson; and M. Cole.
40. Draft report dated November 1981 by K.W. Brown and Associates, Inc., concerning "Potential Pathways of Human Exposure to Polynuclear Aromatic Hydrocarbons at the Abandoned Reilly Chemical and Tar Site"; Brown is an expert retained in anticipation of litigation who will not testify at trial.
41. Letter dated November 9, 1981 from K.W. Brown to Mark Hult (USGS) concerning draft report listed immediately above.

42. Memorandum dated December 18, 1981 from Philip Cohen of the USGS to the EPA Acting Hazardous Waste Assistant Coordinator concerning expert witness testimony; copies to ACH/O Administrative Officer; Regional Hydrologist.

43. Notes dated December 21, 1981 by Mark Hult concerning trial testimony and preparation for trial.

44. Memorandum dated December 15, 1981, from F.T. Schaefer (USGS) to the USGS District Chief, St. Paul, Minnesota, concerning retention of expert witness for trial.

45. Letter dated November 18, 1981 from Thomas Buchanan of the USGS to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, concerning retention of experts for trial.

46. Letter dated January 4, 1981, from Ren Jen Sun of the USGS to the USGS District Chief, St. Paul, Minnesota, concerning retention of experts for trial. Attachment is a letter dated January 4, 1981, to J. Roy Murphy of EPA on the same subject. Copies to Regional Hydrologist.

47. Letter dated January 4, 1981, from Ren Jen Sun of the USGS to the USGS-EPA Hazardous Waste MOU Coordinator concerning retention of experts for trial. Copies to Regional Hydrogeologist; District Chief (St. Paul); Mark Hult (USGS).

48. Memorandum dated July 7, 1980 from Mark Hult to Dan Gillies of USGS containing Hult's impressions and opinions relating to a USGS - ERT meeting.

49. Memorandum dated December 8, 1981 from Eugene Patten of the USGS to the Chief Hydrologist and Regional Hydrologist, WRD, NR, concerning retention of experts for trial. Attachments: Memo from M. Kosakowski (EPA) to J. Roy Murphy (EPA) dated November 12, 1981; letter dated November 18, 1981, from Thomas Buchanan of USGS to Asst. Atty. Gen. Land and Natural Resources Div., U.S. DOJ; letter dated December 1, 1981 from J. Roy Murphy of EPA to Ren Jen Sun of USGS; and letter dated November 13, 1981 from Erica Dolgin of the U.S. Department of Justice to Thomas Buchanan of the USGS; all attachments concerning the retention of expert witnesses for trial.

50. Memo dated September 22, 1980 from Francis Biros, EPA, to Mark Hult of USGS concerning expert witness testimony and chain of custody procedures for litigation. Copies to F. Stiehl, R. Leininger.

51. Draft proposal from Brenda Kimble to M. Kosakowski of EPA concerning sample analysis; proposal was never undertaken.

52. Memo dated September 2, 1980, from Sandra Gardebring of EPA to William Sanders, III, EPA, concerning chain of custody procedures for litigation. Copies to C. Ross; W. Scrutin; Grimes/Berman/Leininger; M. Hult; D. Devlin; F. Biros; Birdebring/Bryson; Fenner; Miner/Muno/ Toepfer.

53. Memo dated November 25, 1981 from Paul Bitter to Richard Ferguson, Michael Convery, Marc Hult, and James Pankanin, concerning litigation strategy and relationship to remedial work. Copies to Paul Nadeau; L. Sibold; S. Shakman; and M. Kosakowski.

54. Memo dated December 12, 1980 from Dan Gillies, USGS, to Melanie Toepfer, EPA, concerning a proposal for work at the Reilly site Proposal was never undertaken.

55. Memo dated January 20, 1982, from Paul Bitter to Richard Ferguso of the MPCA containing Bitter's comments on draft: "Study of Ground Water Contamination in St. Louis Park, Minn.", by E.A. Hickok and Associates; copies to M. Convery, S. Shakman, M. Hult, and R. Ball.

56. Draft report dated December, 1980 prepared by Mark Hult: "Transport of Coal-Tar Derivatives in the Prairie du Chien-Jordan aquifer, St. Louis Park, Minnesota"

57. Working document prepared by Mark Hult for discussion purposes: "A Proposed Approach for the Chemical and Hydrogeological Characterization of Hydrocarbons Fluids in the Source Volume in the Drift Aquifer" dated November-December, 1981. Proposal was never undertaken by USGS.

58. Memorandum dated July 27, 1980, from Richard Ferguson of MPCA to Stephen Shakman of MPCA upon which Mark Hult wrote comments concerning litigation strategy and areas of expert witness testimony.

59. Letter from Mike Kosakowski, U.S. EPA, to Mike Convery, MPCA, of May 18, 1981 re: litigation strategy cc: Fred Stiehl

60. Attendance list for litigation meeting June 8, 1982.

61. Attendance list for litigation meeting July 14, 1981.

62. Agenda for July 14, 1981 litigation meeting.

63. Letter from Cynthia Patrick, Life Systems, to Mike Kosakowski, EPA re: expert support in litigation.

64. Preliminary protocol for pollutant sampling, prepared by Brenda Kimble.
65. Memorandum from Michael Kosakowski, EPA, to Roy Murphy, EPA of Nov. 30, 1982 re: USGS assistance in Reilly Tar litigation.
66. Letter to Anne Gorsuch, Administrator, EPA, from Louis Briemhurst, Executive Director, MPCA of Nov. 23, 1982 cc: Carol Dinkens, Assistant Attorney General, DOJ, and Warren Spannaur, Attorney General, concerning litigation strategy.
67. Letter from Paul Bitter, EPA, to Dr. Eula Bingham of March 17, 1983. cc: David Hird, Robert Leininger, Stephen Shakman. Letter concerned proposed mutagenicity testing.
68. Letter to Russell Wilder, GCA from Michael Kosakowski, EPA, dated April 5, 1983 re: technical support in litigation. cc: David Hird
69. Letter to Dr. Thomas Copeland, GCA Corp. from Michael Kosakowski, EPA, of April 8, 1983 re: technical support in litigation. cc: David Hird
70. Letter from Paul Bitter to Dr. James Selkirk of March 12, 1984. cc: David Hird, Robert Leininger, Deborah Woitte. Letter concerned toxicological issues in the litigation.
71. Letter from Paul Bitter EPA, to Dr. James Selkirk (undated) cc: David Hird, Deborah Woitte, Robert Leininger, Stephen Shakman re: analytical data.
72. Letter from Paul Bitter, EPA, to Michael Harris, CH2M Hill of April 26, 1984 cc: David Hird, Stephen Shakman, Robert Leininger, Deborah Woitte. Letter concerned proposed sampling program for enforcement purposes.
73. Letter of Mark Simonett, MPCA, to George Duba, Techlaw, of May 1, 1984 re: analysis of sampling data for litigation purposes.
74. Letter from Ken Stevenson, MAG, to Mark Simonett, MPCA of May 25, 1984 transmitting data obtained in discovery from ERT. cc: David Hird
75. Letter to Brenda Kimble from Paul Bitter, EPA, of Aug. 13, 1984. cc: David Hird, Stephen Shakman, Deborah Woitte. re: data for use in litigation.
76. Letter from Paul Bitter, EPA to Dr. James Selkirk of June 3, 1983 cc: David Hird, Deborah Woitte, Robert Leininger, Stephen Shakman. Re: topics for litigation strategy meeting.

Letter to Russell Wilder, GCA Corp. from Paul Bitter, EPA of June 13, 1983 cc: David Hird, Robert Leininger. Re: technical work in support of the litigation.

77. Letter to Brenda Kimble from Paul Bitter, EPA, of July 1, 1983 cc: David Hird, Stephen Shakman, Robert Leininger, Deborah Woitte. Letter concerned meeting of technical advisors in Reilly litigation.

78. Letter to Robert Burns, NUS Corp., from Paul Bitter, EPA of July 8, 1983 cc: David Hird re: proposed sampling program.

79. Letter to Michael Hansel, MPCA, from Paul Bitter, EPA of July 15, 1984 cc: David Hird, Robert Leininger, Stephen Shakman re: litigation support activities.

80. Letter to Dr. James Selkirk from Paul Bitter of Aug. 23, 1983 cc: David Hird, Stephen Shakman, Deborah Woitte, Robert Leininger re: status of trial preparation efforts.

81. Letter to Dr. James Selkirk from Paul Bitter, EPA of Sept. 8, 1983 re: proposed sampling program.

82. Letter to Robert Burns, NUS, from Paul Bitter, EPA, of Sept. 2, 1983 re: proposed sampling program. cc: David Hird, Robert Leininger

83. Letter from Paul Bitter, EPA, to Steven Riner, MPCA, of Sept. 14, 1983 re: litigation meeting. cc: David Hird, Robert Leininger, Deborah Woitte, Stephen Shakman, Dennis Coyne

84. Memo to Mark Simonett MPCA, from Dean R. Anderson of July 28, 1983 re: graphics for litigation use.

85. Letter to Dr. James Selkirk from Paul Bitter, EPA of Oct. 5, 1983 cc: David Hird, Robert Leininger, Deborah Woitte, Stephen Shakman re: literature concerning carcinogens.

86. Memo from Mike Kilpatrick, EPA to Mike Kosakowski, EPA of Oct. 18, 1983 re: activities of Sharon Foote. cc: Carol Green, DOJ

87. Letter from Paul Bitter, EPA, to Dr. David Cogley, GCA, of October 24, 1983 re: GCA litigation support cc: David Hird

PARTIAL LIST OF PRIVILEGED DOCUMENTS

1. Letter from Paul Bitter to Steve Piner, dated June 20, 1984
cc: S. Shakman, R. Leininger, D. Hird, re: meeting.
2. Letter from Ken Stevenson to Lisa Wilhelm of June 22, 1984
re: Deposition exhibits, cc: D. Hird.
3. Letter of September 21, 1984 from Paul Bitter to James Longbottom,
Chief, EPA Organics Lab re: Dennis Foerst, cc: D. Hird,
R. Leininger, D. Woitte, S. Shakman.
4. Letter from Paul Bitter to Brenda Kimble of October 22, 1984
re: expert witness tasks. Copy sent to David Hird.
5. Letter from Paul Bitter to H.O. Pfannkuch of November 14, 1984
re: conversations with S. Shakman and M. Simonett, cc: S. Shakman,
D. Hird, R. Leininger.
6. Letter from Gene Lucero, EPA Office of Waste Programs Enforcement,
to Basil Constantelos, dated November 19, 1984 re: litigation
support. cc: Steve Ramsey, Fred Stiehl, Robert Schaeffer.
7. Draft comments prepared by Paul Bitter on Reilly's response to
the EPA Administrative Order.
8. Personal notes of Chris Grundler on settlement meetings and
conversations with attorneys.
9. Quarterly case review summary from Chris Grundler to Gene
Lucero.

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